WHETHER IN ESTIMATING THE REASONABLENESS OF RATES PRESCRIBED FOR PASSENGER TRAFFIC THE COURT SHOULD TAKE INTO CONSIDERATION THE EARNINGS DERIVED FROM PASSENGER TRAFFIC ONLY, OR SHOULD TAKE INTO CONSIDERATION THE EARNINGS FROM BOTH FREIGHT AND PASSENGER TRAFFIC.

The Supreme Court of Pennsylvania, in declaring unconstitutional an act of the Legislature fixing two cents as the maximum fare per mile for transportation of passengers on railroads in that State, so far as it relates to the plaintiff company, holds that a carrier is entitled to earn a net income not less than the legal rate of interest, plus a sum sufficient to pay fixed charges, operating expenses, cost of maintaining the plant, and providing for a sinking fund for the payment of debts, besides a fair profit to the owners; and that in determining whether passenger rates are unreasonable or unjust, the passenger traffic of the road should be considered separate and distinct from the freight traffic.[1] There are strong dissenting opinions, which take the view that the earnings from all the branches of the business should be considered as a basis of fixing a rate for passenger traffic which would conform to the test of reasonableness above laid down.

It is well settled that a State may regulate the rates of a business affected with a public use;[2] and this may be done either through the medium of the Legislature or of a commission.[3] Such regulation, however, is subject to review by the courts, and whether the rates are so unreasonable as to operate to deprive the carrier of its property without due process of law, becomes a judicial question ultimately, although it may be primarily a legislative question.[4]

The test of reasonableness applied by the United States Supreme Court has been whether or not the rate permits a fair return on all the property of the carrier used for the convenience of the public,[5] and while the cases have arisen chiefly upon

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[1] *P. R. R. Co.* v. *Phil. County*, 68 Atl. Rep. 676 (1908).

[2] *Munn v. Ill.*, 94 U. S. 113 (1876); *At. Coast Line* v. *N. C. Corp. Com.*, 206 U. S. 1 (1906).

[3] *R. R. Com. Cas.*, 116 U. S. 307 (1886); *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. at 393 (1893); *M. & St. L. R. R. Co.* v. *Minn.*, 186 U. S. 257 (1902).

[4] *M., St. P. & Chicago Ry. Co.* v. *Minn.*, 134 U. S. 418 (1890).

[5] *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362 (1893); *Smyth* v. *Ames*, 169 U. S. 466 (1897).

questions involving freight rates,[6] still the most positive declarations of the Supreme Court upon the subject have been in cases which involved passenger as well as freight rates.[7] The same test has been adopted by the Interstate Commerce Commission.[8]

It has been held, also, that a carrier is not justified in charging an unduly high rate over a particular line which is a part of a great system, merely because that particular line fails to pay expenses,[9] and the right of a State to compel a railroad company to run a particular train for the convenience of the public, even though it entailed a pecuniary loss upon the company, has been sustained by the Supreme Court of the United States.[10]

On the other hand, the Supreme Court has held that in determining the reasonableness of a State regulation of intrastate traffic, all consideration of interstate traffic should be excluded, and that the intrastate rate should be so fixed as to afford a fair return to the carrier upon the capital invested in that branch of its business regardless of the income from interstate traffic.[11] The bald question of separating the freight and passenger rates and the right of the carrier to secure a fair return upon each without regard to the return upon the other, seems, however, not to have been as yet presented to the Supreme Court for adjudication. The attitude of that court toward the question cannot be anticipated with certainty, but the cases cited incline, upon principle, toward the minority view in the principal case.

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[6] *M., St. P. & Chicago Ry. Co.* v. *Minn.*, 134 U. S. 418 (1890); *C. & N. W. R. R. Co.* v. *Dey*, 35 Fed. Rep. 866 (1888); *Ames* v. *U. Pac. Ry. Co.*, 64 Fed. Rep. 165 (1894); *No. Dakota Rate Cas.*, 91 Fed. Rep. 47 (1898).

[7] *C. M., etc., Ry. Co.* v. *Tompkins*, 176 U. S. 180 (1899); *Ga. R. R., etc., Co.* v. *Smith*, 128 U. S. 174 (1888); *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362 (1893); *Smyth* v. *Ames*, 169 U. S. 466 (1897).

[8] *Brabham* v. *Atl. Coast Line*, 11 Interst. Com. Rep. 464 (1905); *Artz* v. *Seaboard Air Line Ry. Co.*, 11 Interst. Com. Rep. 458 (1905).

[9] *Interst. Com. Com.* v. *R. R. Co.*, 118 Fed. Rep. 613 (1902).

[10] *At. Coast Line* v. *N. C. Corp. Com.*, 206 U. S., 1 (1906).

[11] *Smyth* v. *Ames*, 169 U. S. 466 (1897); *No. Dakota Rate Cas.*, 91 Fed. Rep. 47 (1898).